IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Contempt Petition No. 305 of 2004

Prabhu Dayal Dhyani
S/o Late Sri Shiv Dayal Dhyani
R/o Shashi Nikunj, Kamleshwar
Post Srinagar
District- Pauri Garhwal. …….Petitioner

Versus

1. Sri Harisha Chandra Joshi
   District Magistrate, Pauri Garhwal
2. Sri Brij Mohan Yadav
   Sub Divisional Magistrate
   Competent Authority, Regulated Area
   Sri Nagar, Pauri Garhwal.
3. M/s Sanjeev Enterprise/Mahajan Safe Industry
   through Vijay Kumar Mahajan
   and Sanjeev Kumar Mahajan
   Kamleshwar, Sri Nagar, Pauri Garhwal

…….Respondents

Shri S.N. Babulkar, Sr. Advocate, assisted by Shri Tumul Nailwal, learned counsel for the petitioner.
Shri D.C.S. Rawat, learned counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit.

2. This petition is filed, complaining the disobedience of the court's order dated 27.05.2004, passed in writ petition No. 1132 of 2001 (old No. 36025 of 1997). The said order, reads as under:-

"Heard Mr. S.N. Babulkar, learned counsel for the petitioner and Mr. K.P. Upadyaya, learned Standing Counsel for the State.

Learned Standing Counsel has made a statement that the S.D.M., Pauri Garhwal has reported to him that the unit is closed, therefore, the grievance of the petitioner does not survive.

In view of this statement, the writ petition has been rendered infructuous and is dismissed as such."

The aforesaid order, as is clear from the language, does not direct any party to do or not to do something. However, grievance of the petitioner is this that the respondents got a false statement made before the Court that the unit is closed and got the writ petition dismissed as infructuous on the basis of it. On perusal of the contempt petition and the rejoinder affidavit, I found that the petitioner has admitted that for one day the unit was closed. As such, technically it cannot be said that on that day when the order was passed, the unit was not closed. Learned counsel for the petitioner submitted that the act on the part of the respondents is worse than the wilful disobedience of the simple order of the court, as they have played fraud on the court by making a statement and thereby next day reopening the unit. This Court does not appreciate the act of reopening a unit, regarding which the statement is made that it is closed. However, there are some more significant facts on the record. Firstly, the affidavit filed by respondent No. 3, shows that the unit, now functioning is different than the unit closed. In reply to this, learned counsel for the petitioner alleged that though the name of the unit is different but place and address of the unit is same and the persons running the unit are same. Secondly, the another aspect in this case is that there is an order dated 01.11.2004, passed by learned Civil Judge in Civil Suit

No. 25 of 2004, whereby Sanjeev Kumar Mahajan, has obtained a stay order against the respondents that the defendants are restrained from interfering in the business of M/s Mahajan Safe Industry.

3. In the circumstances, though this Court is not happy about the developments, which has taken place but since there is no specific direction from the court to close the unit, as such this Court does not find a case in which any of the three respondents can be punished under the Contempt of Court Act, 1971. Therefore, the contempt petition is dismissed and notices are discharged.

(Prafulla C. Pant, J.)

Dt: 9th March, 2006
Sweta